

SANDLER REIFF

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December 16, 2015

Via E-Mail

Jeff S. Jordan, Esq.
Supervisory Attorney
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Re: MUR 6973

Dear Mr. Jordan:

I serve as counsel for Ruben Kihuen, Ruben Kihuen for Congress and Jay Petterson ("collectively referred to as "Respondents"), in his official capacity as Treasurer. By way of background, Ruben Kihuen is a candidate for the United States House of Representatives for the 4th District of Nevada. Ruben Kihuen for Congress is Mr. Kihuen's authorized committee for that office. In addition, Mr. Kihuen has been a State Senator since 2010 and was a member of the Nevada State Assembly from 2006 until 2010. In September of 2012, Mr. Kihuen announced his candidacy for the 1st District of Nevada for the United States House of Representatives, but withdrew shortly thereafter.

I write to respond to a complaint filed by Timothy A. La Sota, an Arizona attorney, regarding several activities undertaken by Respondents dating back to 2011, including payments made to a consultant during Mr. Kihuen's time as a state legislator. Many of the allegations and assumptions made by Mr. La Sota are either incorrect or highly exaggerated. Respondents have not violated any campaign finance laws and the activities complained of by Mr. La Sota comprise relatively limited spending by the Kihuen campaign. Below, I will respond individually to each allegation made by Mr. La Sota.

Allegation #1 – April 25, 2015 Fundraising Event

Mr. La Sota notes that Respondents held a fundraising event on April 25, 2015 at Tacos & Beer. In his complaint, Mr. La Sota incorrectly assumes that 1) the event was held in a space

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ordinarily reserved for a fee; 2) the event was "staffed"; and 3) that lavish "hors d'oeuvres" were served at the event. Each of these assumptions is incorrect. First, the event was not held in a reserved area of the restaurant and was, in fact, held in a public portion of the restaurant. The restaurant does not require any payment to invite individuals to this portion of its restaurant. Second, the event was not staffed in any way. At the time of the event, the campaign had one employee. All of the individuals who assisted in serving food at the event were campaign volunteers. Three, there were no lavish hors d'oeuvres served at the event. All beverages were served via cash bar and were not paid for by the campaign. See FEC Advisory Opinion 2015-7. The only costs for the event were \$879 for food and \$118 for a cake. The \$879 was paid for initially by the Ramirez Group, a consulting firm, who has invoiced the campaign for the expenses. The campaign has amended its reports to include this debt and has since paid for the catering expenses. In addition, an individual, Claritssa Sanchez, paid for a cake at a cost of \$118. The committee has amended its report to show this payment as an in-kind contribution.

Allegation #2 – June 29, 2015 Fundraising Event

Mr. La Sota asserts that Respondents held a fundraising event the Embassy Night Club and asserts that 1) the event was one in the same with an event being held by the Latin Chamber of Commerce; 2) the event appears to have been hosted by Alien Tequila and the Latin Chamber of Commerce; 3) the committee may have received over \$9,100 in connection with the event. Each of the allegations is untrue. First, although there was an event being hosted by the Latin Chamber of Commerce at the same time at the night club, the two events were separate and unrelated. Respondents disseminated its own advertising for the event and did not co-brand any advertising with the Latin Chamber of Commerce. The advertising attached to the complaint is merely an event listing done by the night club which it does for all hosted events. Regardless, any attempt by the night club to promote the event at its own premises on social media would be exempt from regulation under the Commission's Internet exemption. 11 C.F.R. § 100.94. ¹ See also Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Peterson, MUR 6729 (October 24, 2014). Any co-branding on the social media page by the night club would not have been done in coordination with Respondents.

Second, it should be noted that approximately 10 persons attended the fundraising event and only \$800 was raised at the event from three donations, nowhere close to the \$9,000 alleged by Mr. La Sota. Third, the food was not provided at no charge by the night club or Alien Tequila but was, in fact, paid for by an individual, Zaher Farkh. In addition, beverages for the event were provided through a cash bar. The total cost for food and beverage for the event was \$218.45. Respondents have amended their FEC reports to disclose Mr. Farkh's payment for the food as an in-kind contribution. Finally, there were no waived room rental fees for the event as the night club did not provide a private room, and it is our understanding that the club has no history of charging a rental fee for events held on its premises.

¹ It should be noted that we cannot locate any advertising for this event on the Facebook page of the Embassy Nightclub so we are unable to evaluate many of the claims made in the complaint with respect to the layout and presentation of the advertising.

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Allegation #3 – Office Space

Mr. La Sota, with absolutely no basis in fact, alleges that Respondents failed to report any rental expenses and surmises that Respondents' campaign is being run out of the Ramirez Group, which is the employer of Mr. Kihuen. While it is true that Respondents are currently subleasing space from the Ramirez Group, Respondents did not begin to use space at the Ramirez Group until September 2015. Currently, the campaign only has two employees; both were working out of their residences prior to September. Contrary to Mr. La Sota's assertions, Mr. Kihuen had not yet begun running for Congress in earnest prior to September and all activities prior to that time were the management of fundraising calls and social media activity. The campaign will likely open a full campaign office once it is ready to hire additional employees. Currently, the Ramirez Group rents space to Respondents sufficient to host its two employees. The rental fee for this space is \$400. Although Respondents had not yet paid its September rent until after the reporting deadline for the October Quarterly Report, the debt was not required to be disclosed since the amount of the debt did not exceed \$500, nor was it more than 60 days in arrears. 11 C.F.R. § 104.11. Respondents are current in rent payments with the Ramirez Group and intend to find more permanent office space once it is ready to ramp up the campaign and hire additional employees.

Allegation #4 – Other Campaign Expenses

As generally discussed previously in this response, contrary to Mr. La Sota's assertions, the campaign has not yet taken off in earnest and has had limited expenses to date. We address each of Mr. La Sota's assertions below:

1) Campaign Manager and Campaign Staff

To date, Respondents have only hired two campaign staffers. David Chase was hired as campaign manager and began work on May 15, 2015. Sam Rivers was hired as call time manager on June 15, 2015. Due to banking issues caused by a switch in bank accounts and a subsequent hold put on the committee's funds due to that switch, the committee had limited to no availability to access its funds in June of 2015. Accordingly, Respondents and its employees mutually agreed that the first payroll for the campaign would be on July 1, 2015. Subsequent to that date, Respondents were able to create a more regular payroll system and payroll is now undertaken on a semi-monthly basis.

Contrary to Mr. La Sota's assertions, Respondents were not required to disclose any outstanding payroll on its July Quarterly Report. To be sure, due to the delay in the availability of funds described above, both Mr. Chase and Mr. Rivers mutually agreed with Respondents that their first payroll check would be issued on July 1, 2015 and not earlier, and would include all income earned through the end of June of 2015. Commission regulations do not require disclosure of any payroll as debt unless the agreed upon payroll date has passed and the committee has failed to pay its employees. 11 C.F.R. § 104.11(b). Here, since the first payroll

was not scheduled to be paid until July 1st, as mutually agreed by Respondents and its employees, no debt reporting for payroll was required.²

2) Cross Country Travel

Mr. La Sota asserts that the committee failed to disclose the costs of two trips to Washington D.C. on its campaign disclosure reports. This is patently false. First, the trip on May 5, 2015, was unrelated to Respondents' campaign and was for a Cinco de Mayo event at the White House. No campaign activity or fundraising occurred on this trip. The second trip on June 15, 2015 was properly paid for and disclosed on Respondents' reports. On this second trip, Mr. Kihuen was accompanied by his Campaign Manager, David Chase. Mr. Chase paid for both plane tickets for Mr. Kihuen and himself, and was reimbursed in a timely manner by Respondents in accordance with 11 C.F.R. § 116.5. In addition, Mr. Kihuen's payment of his accommodations was reported by the Respondents as an in-kind contribution. Mr. Chase stayed at the personal residence of a friend while they were in Washington. Accordingly, the committee was not required to disclose Mr. Chase's payment for the air travel as a debt on its July Quarterly Report in accordance with the Commission's regulations regarding the reimbursement for staff travel expenses. The payment to Mr. Chase for the travel costs are properly and fully disclosed on its October Quarterly Report. In addition, Respondents were billed for costs for an event held in Washington on July 13th by the entity that paid for the event, and the invoice was promptly paid on July 15th by Respondents. See p. 118 of October Quarterly Report (payment to Connectiva, Inc.). A copy of the invoice for the event costs is attached as Exhibit A.

3) Facebook Ads

Respondents acknowledge running Facebook ads between June 26th and June 30th. However, the committee spent a total of \$67.00 on these ads and the invoice for these ads was received on July 31, 2015, as it is the standard practice of Facebook to invoice advertising costs at the end of the month for all advertising impressions for that month. Since the normal invoicing practice for Facebook is to invoice advertising in arrears, no debt reporting was required since the actual cost of advertising was not invoiced, or even known until the invoice was received in July. Notwithstanding, even assuming, *arguendo*, that reporting would have been triggered by the dissemination of the ads, debt disclosure would not have been required since the total amount of the advertising was less than \$500 and no debt over 60 days old would have existed as of June 30, 2015. A copy of the Facebook invoice for the advertising is attached as Exhibit B.

² It should be noted that Nevada payroll laws permit employer and employee to set any mutually agreed time period for payroll coverage and payment date. N.R.S. § 608.070.

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4) Kihuen website page says it is Paid for by ActBlue

The website that Mr. La Sota points to in his complaint is not a web page of Respondents. This page is actually the web page of another federal political committee, ActBlue, which solicits contributions and forwards earmarked contributions in accordance with 11 C.F.R. § 110.6. Respondents directed visitors of its own site to ActBlue's site via link so that individuals could contribute an earmarked contribution to Respondents' campaign via ActBlue's website.

ActBlue's website clearly states who pays for it, includes all required disclaimers, and clearly states that contributions made through its website are earmarked for the candidate to which a contributor earmarks their donation. The web page itself clearly and correctly indicates that ActBlue has paid for it and Respondents are permitted to link or steer potential donors to ActBlue's website to make contributions earmarked for its campaign or any other campaign listed on ActBlue's site. In addition, there is no prohibition or limitation on the use of any Kihuen logo by ActBlue since the use of such logo is not a republication of campaign material since the website is not a public communication. See 11 C.F.R. §§ 100.26 & 109.21(c)(2).

In addition, Respondents are permitted to link or steer visitors of its own website to the website of any third party without such link constituting an in-kind contribution from one entity to another. 11 C.F.R. § 100.94(b). Once visitors were guided to the ActBlue website, there is no confusion to anyone who contributes on this website that it is maintained by and paid for by ActBlue.

5) 2011 Expenses

Mr. La Sota alleges that Mr. Kihuen's campaign may have paid for expenses related to his federal campaign in 2012 with funds from his State Senate campaign account. Specifically, Mr. La Sota questions payments made to Daniel Chavez in August, September and October of 2011. Although Mr. Chavez was hired as Mr. Kihuen's Campaign Manager for an aborted run for Congress in the 2012 election cycle, the payments made to Mr. Chavez from Mr. Kihuen's State Senate campaign related solely to advising Mr. Kihuen on redistricting issues and state legislative issues. The redistricting analysis was solely related to Mr. Kihuen activities in connection with non-federal elections and were primarily focused on the effect of redistricting in connection and State Senate districts.

Regardless of whether such advice was related to Mr. Kihuen's status as a legislator or even as a potential candidate for federal office, such payments for advice and analysis regarding redistricting activities are completely exempt from the Act's definition of "expenditure." Even assuming that they were somehow related to Mr. Kihuen's potential campaign for federal office, they were not required to be paid for from his 2012 congressional campaign account. The Commission, on several occasions, has opined that activities related to redistricting are exempt from the Act. For example, in Advisory Opinion 1982-37, the Commission determined that expenditures for redistricting activity were not "expenditures" under the Act because they were not made "for the purpose of influencing any election for Federal office." See also FEC Advisory Opinion 1981-35. Since payments made by Mr. Kihuen's account to Mr. Chavez for

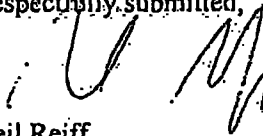
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non-federal purposes, such payments were proper, and do not constitute a contribution from Mr. Kihuen's State Senate campaign account to his 2012 Congressional campaign account.

Based upon the above, it is clear that Mr. La Sota's complaint is mostly bluster and little substance. While the campaign continues to refine its reporting practices and has filed comprehensive minor amendments to their reports (which include issues addressed in Mr. La Sota's complaint), the issues ultimately raised in Mr. La Sota's complaint implicate a minimal amount of spending and reporting by Respondents. In addition, Respondents take its compliance responsibilities very seriously. To be sure, its Treasurer is a professional compliance consultant and the campaign has retained a full time campaign finance counsel to advise the campaign as it begins the process of ramping up its activities in anticipation of the 2016 election.

Accordingly, the Commission should dismiss this largely frivolous complaint by exercising its discretion afforded to it in accordance with Heckler v. Chaney, 470 U.S. 821 (1985).

Respectfully submitted,



Neil Reiff

Counsel for Ruben Kihuen, Ruben Kihuen
for Congress, and Jay Petterson, in his
official capacity as Treasurer

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EXHIBIT A

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Connectiva INC
300 New Jersey Ave NW, Suite 900
Washington, DC 20001
202.465.8797

July 13, 2015

Bill To:
Attn: Jay Petterson
Kihuen for Congress
119 1st Avenue South
Suite 320
Seattle, WA 98104

DATE	DESCRIPTION	AMOUNT
6/15/2015	Corner Bakery	\$ 146.78
6/15/2015	Uber (Afternoon Ride)	\$ 33.33
6/15/2015	Occasions Caterers	\$ 1,090.00
6/15/2015	Uber (Evening Ride)	\$ 18.42
6/15/2015	Uber (Evening Ride_2)	\$ 16.24
6/15/2015	Cab #K687	\$ 8.43
6/16/2015	Uber (Morning Ride)	\$ 18.19
6/16/2015	Uber (Morning Ride_2)	\$ 10.96
6/16/2015	Uber (Morning Ride_3)	\$ 10.99
	Total	\$ 1,353.34

Thank you for your business!

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EXHIBIT B

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4degrees Inc

8980 W. Tennessee Ave.
Lakewood, CO 80226-4168
(303)335-9074
zach@4degre.es
http://4degre.es



4DEGRE.ES
Social Media Agency

INVOICE

BILL TO
Ruben Kihuen for Congress

INVOICE # 3155
DATE 07/31/2015
DUE DATE 08/15/2015
TERMS Net 15

DATE	ACCOUNT SUMMARY	AMOUNT
07/01/2015	Balance Forward	\$1,550.00
	Payments and credits between 07/01/2015 and 07/31/2015	-1,550.00
	New charges (details below)	1,642.00
	Total Amount Due	\$1,642.00

ACTIVITY	AMOUNT
Services	1,500.00
Retainer	
Services	50.00
Photos	
Services	25.00
Domains	
Services	67.00
Facebook Ads - June	

TOTAL OF NEW CHARGES	1,642.00
BALANCE DUE	\$1,642.00

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